out the names of strangers." This bit of evidence implies that the invitation was for meeting Mamat and Dollah as well. The fact that this evidence came out for the first time in re-examination must raise some doubt on the credibility of this witness. It appears as if that this evidence was deliberately concocted to bolster up the theory of conspiracy; and yet, the learned trial judge in his summing up dismissed the variations in the story as of little importance.

Another unusual feature about this case which militates against the theory of conspiracy is this: Would a conspirator seek to establish evidence against himself by inviting the victim to visit his house through an invitation issued through the deceased's brother?

Again, there can be no doubt that P.W.3 is a biased witness since the victim was his brother and he himself was injured by the appellant. It is also significant that when he was asked by a relative, one Senik bin Kedol, to whom he had gone immediately after the fight with a request to attend to his injury and to look for his brother, how he had come by the injury and with whom his brother had fought, he would not reply. That surely could not have been the conduct of an innocent victim of a pre-meditated attack but rather that of a person who was afraid to tell the truth and had something to hide. The jury should have, therefore, been warned to accept the evidence of this witness with the greatest of caution and yet the trial judge, in his summing up had commended him to the jury as witness of truth.

Taking the evidence as a whole, the probability that the fight broke out as a result of provocation offered by the deceased, cannot be ruled out. This aspect of the evidence was never seriously considered and adequately placed before the jury; nor were the probability of a sudden fight or other exceptions which would have reduced the case to culpable homicide not amounting to murder, ever put to the jury. There was, therefore, in our opinion, every likelihood of a miscarriage of justice and the appeal must be allowed.

Appeal allowed.

CHUNG KHIAW BANK LTD. v. BAJAJ TEXTILES LTD. & ANOR.

[O.C.J. (Winslow J.) April 10, 1968]
[Singapore — Motion in Suit No. 63 of 1968]

Practice and Procedure — Injunction — Interlocutory — Delay — Whether should be granted — Agreement for lease — Unexplained delay — Third party in possession — Alternative accommodation — Whether irreparable harm was caused.

Specific performance — Granting of — Agreement for lease — Third party let into possession.

By three indentures of mortgage the defendants charged certain premises to the plaintiffs in consideration of the plaintiffs according overdraft facilities to the defendants. Subsequent to these indentures the parties entered into an agreement for a lease whereby the defendants agreed to grant a lease of a portion of the ground floor of the premises. The agreement for lease made no reference to any of the indentures. On November 5, 1967, the defendants indicated to the plaintiffs that they were not disposed to proceed with the agreement for lease and on December 12, 1967, they further intimated to the plaintiffs that the ground floor and the first floor of the premises in question had been let to a departmental store. On or about December 20, 1967 the departmental store went into occupation of the premises in question and on January 15, 1968, it officially opened for business.

By a motion dated December 12, 1967, the plaintiffs applied for an interlocutory injunction restraining the defendants until further order from letting or parting with the possession of that portion of the premises which formed the subject matter of the agreement for lease. The defendants resisted the application on the grounds that the grant of the lease depended on the giving by the plaintiffs of overdraft facilities as evidence by the last of the three indentures of mortgage and the failure of the plaintiffs to accord such facilities resulted in the indentures of mortgage and the agreement for lease falling to the ground. Further an interlocutory injunction should not be granted because the plaintiffs had been dilatory which resulted in a third party being let into possession. Finally, if the defendants were at fault, the plaintiffs would be sufficiently compensated by damages since they had been offered alternative accommodation.

Held, dismissing the motion: (1) whether the plaintiffs were in breach of any obligation under the third indenture of mortgage was a question to be finally determined at the trial;

(2) if the agreement for lease and the third indenture of mortgage were not connected it was doubtful whether the plaintiffs would be likely to succeed in a claim for specific performance on the basis of the agreement standing by itself;

(3) there was ample time for the plaintiffs to have initiated an action and in failing to do so they were guilty of an unexplained delay and this delay resulted in a third party being let into possession of the premises in question;

(4) if an interlocutory injunction was granted the court would in effect be ordering the defendants to take steps to eject the present occupiers. The court could not order the doing of an act which it could not control;

(5) since the defendants had already offered alternative accommodation in the same building to the plaintiffs it was doubtful whether in such circumstances the failure to reserve the particular portion of the ground floor for the plaintiffs had caused them irreparable injury for which an injunction was the only redress;

(6) this case, therefore, was not a proper one for an interlocutory injunction.

Cases referred to:—

(1) *Deverell* v. *Milne* (1918), 34 T.L.R. 576.

(2) *Daniel* v. *Ferguson* [1891] 2 Ch. D. 27.

MOTION FOR INTERLOCUTORY INJUNCTION.

C. F. J. Ess for the plaintiffs.

J. Grimberg for the defendants.

Cur. Adv. Vult.

Winslow J.: By motion dated 12th January, 1968 the plaintiffs applied for an interlocutory

injunction restraining the defendants until further order from letting or parting with the possession of that portion of the ground floor of premises known as Satnam House at the junction of North Bridge Road and High Street marked red on a plan attached to an agreement for a lease dated 13th December, 1966.

It is an undisputed fact that on the date of the hearing of the motion, *i.e.* 5th March, 1968, a departmental store forming part of the business of Eastern Emporium Limited was already in possession of the said portion of the ground floor as well as other portions of the same premises. No details have however been given to me as to the terms on which they have been let into possession. All that I can gather from the affidavits filed in these proceedings is that, although this store officially opened for business on 15 h January, 1968, Eastern Emporium Limited went into occupation of the premises in question on or about 20th December, 1967. It also appears that on 5th December, 1967, the solicitors for the defendants informed the solicitors for the plaintiffs that their clients were no longer disposed to proceed with the lease agreement and that they were making alternative arrangements in respect of the ground floor and that later, on 12th December, 1967, the defendants informed the plaintiffs that they had given the said ground floor as well as the first and second floors to a departmental store.

Attention should be drawn to three indentures of mortgage dated 6th April, 1963, 15th July, 1963 and 3rd December, 1966. Certain overdraft facilities were agreed to be accorded by the plaintiffs to the defendants in consideration whereof certain lands and premises belonging to the defendants on which Satnam House stands were charged with the payment of all monies outstanding thereunder.

Certain correspondence also took place between the parties in 1965 and 1966 from which it appears that the parties contemplated the grant of a lease of at least part of the ground floor in question but the agreement for a lease of 13th December, 1966 does not itself contain any reference to the indentures or any of them.

A dispute has accordingly now arisen as to whether the grant of a lease was dependant on the grant of overdraft facilities in accordance with the third indenture of mortgage or not. Whereas the plaintiffs claim that the grant of a lease was quite independent of that indenture of mortgage, the defendants contend that the plaintiffs were in breach of their obligations under that indenture and that consequently, the said indenture as well as the agreement for a lease dated 13th December, 1966 which was dependent on the fulfilment of these obligations, fell to the ground.

The attitude taken by the plaintiffs on this point as expressed in their solicitors' letter dated 29th December, 1967 that the agreement had no connection with the mortgage is somewhat surprising in view of previous correspondence between the parties. For example, in their letter of 2nd July, 1965, they clearly stated that the overdraft facility was subject to various conditions of which the grant of a lease of approximately 962 sq. ft. of the ground floor at the corner of High Street and North Bridge Road and the rentals therefore were the principal ones.

Whether the plaintiffs were in breach of their obligations under the third indenture of mortgage dated 3rd December, 1966 is a matter which will have to be finally determined at the trial. Whereas the defendants contend that, by failing to advance monies in November 1967 on production of the architect's certificate relating thereto, the plaintiffs were in breach of contract, the plaintiffs, however, reply that they did not repudiate their contract but merely asked for clarification in their letter of 29th November, 1967. They did admit however that, until clarification, overdraft facilities would, notwithstanding the architect's certificate, not be granted.

It is small wonder therefore that on 29th December, 1967 the plaintiffs' solicitors rested their claim on the agreement for a lease alone and wrote to the defendants' solicitors that "we are instructed to point out that the lease agreement was not in any way whatsoever connected with the mortgage." In that letter they also pointed out that the defendants would "be liable to very heavy damages if they should not carry out the lease agreement."

Before execution of the agreement for a lease, however, it must be remembered that they had made it clear in correspondence that the overdraft facility would be conditional on the grant of a lease. They now state that the third indenture and the agreement for a lease were not connected in any way whatsoever. It seems to me that the plaintiffs cannot eat their cake as well as have it. If the plaintiffs are right in their contention that the agreement for a lease stood by itself and had no connection with the third indenture, their claim for specific performance on this particular agreement will have to be finally determined on the basis of this agreement alone. It is doubtful whether any argument based on the agreement for a lease alone and nothing else will be likely to succeed at the trial in a claim for specific performance. This is an equitable remedy which is in the discretion of the court of trial and will not be ordered if, among other things, it will involve hardship as, for instance, where it would entail the ejectment of tenants in possession. (See *Hill and Redman's* Law of Landlord and Tenant, 14th Edition, p. 112).

Quite apart from these considerations, there are other matters to which I shall refer in due course which make me feel some considerable doubt as to whether an interlocutory injunction should issue at this stage.

First of all, the portion of the ground floor concerned is already in occupation by Eastern Emporium Limited and has been so occupied since at least 20th December, 1967. The plaintiffs knew as early as 5th December, 1967 and certainly on receipt of the defendants' letter of 12th December, 1967, that the ground floor had been given to a departmental store. Although the store officially opened for business on 15th January, 1968, there was at least an intervening month during which the plaintiffs could have initiated action. I appreciate that the court was in vacation during a good part of this period but there was always a vacation judge to whom the matter could, if necessary, have been referred as a matter of urgency. There is accordingly an unexplained delay in pursuing an injunction and this delay has resulted in a third party being let into possession.

Secondly, the plaintiffs must have known that the defendants, rightly or wrongly, no longer considered themselves bound by the agreement. There is now a third party in occupation of the portion of the ground floor in question. If an interlocutory injunction is granted, the court would in effect be ordering the defendants to eject the present occupiers.

According to the plaintiffs, this would be a comparatively simple matter because they rely on the fact that the defendants themselves are only tenants at will under clause 6(12) of the third indenture. The defendants, however, have joined issue with the plaintiffs on this because they say that the whole instrument, *i.e.*, the third indenture fell to the ground and with it clause 6(12) on the plaintiffs failing to advance money to them in November 1967. It will again be noted here that it will be difficult for the plaintiffs to avoid relying on the third indenture in any claim for specific performance of the agreement for a lease. It does not therefore, in my judgment, seem probable that any claim for specific performance will succeed without recourse to the third indenture and proof to the satisfaction of the trial judge that it has not been repudiated as the defendants allege.

Moreover, if the plaintiffs succeed in satisfying the court that they were not in breach of contract, the question of ejectment of the present occupiers will have to be considered before any decree for specific performance can be granted.

As I have already indicated, a court of equity will not easily grant such a decree in such circumstances. The case of *Deverell* v. *Milne* [1] is pertinent. There, according to the headnote:—

> "The defendant agreed to let a houseboat to the plaintiff for a fortnight, but before the date fixed for the commencement of the tenancy the defendant declined to carry out the arrangement and let the houseboat to other persons, and these persons were in occupation at the time of an application by the plaintiff for an interim injunction to restrain the defendant from letting the houseboat to other persons.
>
> Held, that the plaintiff's remedy, if any, lay in damages only."

Mr. Justice Sargant whilst deprecating the defendant's conduct, found himself unable to grant the injunction because other persons were already in actual possession of the houseboat.

This brings me to a further ground for not granting the injunction, *viz.*, that damages would be sufficient compensation. It should also be remembered that the defendants had already offered alternative accommodation in the same building on another portion of the same ground floor to the plaintiffs and I am doubtful whether, in those circumstances, the failure to reserve the particular portion of the ground floor concerned for the plaintiffs has caused them irreparable injury for which an injunction is the only redress.

In conclusion, I would refer to a number of cases cited by counsel for the plaintiffs, such as *Daniel* v. *Ferguson*,[2] where a mandatory injunction was granted restraining the defendant from erecting a wall in such a way as to obstruct the plaintiff's lights. Those, however, were all cases which involved the defendants in positive, physical acts of erecting walls or buildings which a court could properly order to be pulled down. In the present case, even if I had confidence in the probable success of the plaintiffs at the trial, I am not being asked to grant an interim injunction requiring the defendants to do some physical act like pulling down walls.

If I were to grant an injunction, I would in effect be ordering the defendants to take steps to eject the present occupiers which does not merely require them to do some physical act. I therefore do not see the force of cases such as *Daniel* v. *Ferguson* in the context of the present factual situation where such an order would require the initiation of legal proceedings by the defendants for ejectment in case the present occupiers choose to contest the matter by refusing to vacate on a notice to quit.

As counsel for the plaintiffs said, the defendants probably obtained a better offer for the said portion of the ground floor but, however reprehensible their conduct in this connection may appear to be, that is, by itself, no sufficient ground for virtually compelling them to litigation. I do not think that an interim injunction was ever intended to apply in such circumstances. A court can order a man to pull down a wall where his conduct in putting it up in the first place is in defiance of some probable right in someone else but it would seem that it cannot,

in view of the authorities, compel him to eject a tenant as this would require the doing of an act which the court can no longer control.

I have therefore come to the conclusion that this is not a proper case for an interlocutory injunction. The motion is therefore dismissed. Costs will be costs in the cause.

Motion dismissed.

Solicitors: *R. C. H. Lim & Co.; Drew & Napier.*

IN RE AN ADVOCATE & SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Winslow & Kulasekaram JJ.) April 14, 1968]

[Singapore — Originating Summons No. 144 of 1967]

Advocates & Solicitors — Professional misconduct — Alleged false statements made to obtain costs — Legal Profession Act, 1966, s. 87 (2)(b).

The respondent acted as solicitor for the plaintiffs in an action and had obtained judgment against the defendants. As counsel for the plaintiffs, the respondent proceeded to issue a writ of seizure and sale to enforce the judgment. An application by the defendants to have the writ set aside was dismissed by Choor Singh J. The defendants appealed against the judgment in the main action and the decision of Choor Singh J.

Subsequently the defendants instructed their solicitors to withdraw the appeals. The instruction was communicated by letter to the respondent for the purpose of obtaining his consent to the withdrawal of the appeals. The respondent replied stating his refusal to give his unconditional consent. Consequently an application for withdrawal of the appeals was made before the Federal Court.

During the hearing the respondent was questioned by the court as to whether he had earlier been asked to consent to the withdrawal of the appeals. There was a conflict of evidence as to what the reply was. According to counsel for the defendants the respondent replied to the effect that no letter was written to him. The respondent's version was that he had merely confirmed a negative reply of the defendants' counsel. In the circumstances, costs were awarded to the plaintiffs/appellants.

As a result of a complaint made by the defendants' solicitors, a disciplinary committee was set up under section 27 of the Advocates and Solicitors Ordinance to inquire into whether the respondent had made a false statement to the Federal Court for the purpose of obtaining costs which he was otherwise not entitled to. The committee came to the conclusion that the respondent "had been guilty of grossly improper conduct in the discharge of his professional duty in that he had wilfully and rashly misled the court." Upon an order of court requiring the respondent to show cause why he should not be dealt with under section 87 of the Legal Profession Act, 1966,

Held: having regard to the explanations made by the respondent before the disciplinary committee and the ambiguous nature of the committee's findings, the court was not satisfied that there was sufficient evidence to show that the respondent had wilfully misled the Federal Court into believing that he had not been notified of the defendants' intention to withdraw the two appeals.

ORIGINATING SUMMONS.

J. B. Jeyaretnam for the Advocates and Solicitors Society.

M. Karthigesu for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, an advocate and solicitor of this court, was by an order of court dated 28th July 1967 ordered to show cause before us why he should not be dealt with under section 87 of the Legal Profession Act 1966, the material provisions of which are as follows:—

> "87 (1) All advocates and solicitors shall be subject to the control of the High Court and shall be liable on due cause shown to be struck off the Roll or suspended from practice for any period not exceeding two years or censured.
>
> (2) Such due cause may be shown by proof that such person —
>
> (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of breach of any rule or usage or conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor;".

The background facts are these. The respondent practiced under the firm name of J.T.C.Y. & Co. His firm acted as solicitors for United Investment & Finance Ltd. the plaintiffs in an action against Universal Service Agency for whom the firm of Wee Tin Teck & Co. acted as solicitors. The plaintiff company obtained judgment on the 7th April 1965 against the defendant firm for $1,832.13 and costs to be taxed.

After judgment had gone against them, the defendant firm instructed the solicitor's firm of Pillai & Co. to act for them in the matter in place of Wee Tin Teck & Co. and a notice of change of solicitors was filed on the 13th April 1965 and a copy served on J.T.C.Y. & Co.

Pillai & Co. filed a notice of appeal against the judgment on the 15th April 1965, but, prior to that date, had been in correspondence with J.T.C.Y. & Co. offering to forward the amount of the judgment to the latter on the latter's undertaking to refund the same should the defendant firm succeed in the appeal. This offer was rejected.

Instead of paying the amount of the judgment, the defendant firm, through their solicitors, paid it into court on the 19th April 1965 and gave notice of this payment in to J.T.C.Y. & Co., who meanwhile proceeded to have their costs in the action taxed in the sum of $1,911.95 on the 11th May 1965. The following day, 12th May, they wrote to Pillai & Co. demanding payment from the defendant firm of the judgment sum and the taxed costs within four days or otherwise execution would be levied without further notice. The defendant firm's reply to this demand was